

not always be successful, not to stick to tried-and-true formulas that will satisfy a government-imposed standard.

In sum, the adoption of processing guidelines and other children's programming standards is contrary to Congressional intent, unwise and unnecessary. At this point the Commission should merely reaffirm (1) that it expects licensees to comply with the provisions of the Act and the regulations and policies already issued by the Commission; (2) that it expects licensees in their overall programming to serve the educational and informational needs of children, including programming "specifically designed" to serve the those needs; (3) that the Commission will scrutinize licensee efforts in this area in connection with license renewals and (4) that if broadcasters are cavalier about their compliance with children's programming requirements, or unreasonable in their programming judgments, they do so at the risk of raising questions at license renewal time.

Although NBC hopes the Commission will abandon any notion of guidelines or standards in this area, we will nonetheless next address the specific proposals contained in the Notice.

III. THE SPECIFIC PROPOSALS CONTAINED IN THE NOTICE SHOULD BE REJECTED

A. The Commission Should Not Adopt Quantitative Processing Guidelines

The Notice proposes the adoption of staff processing guidelines specifying the amount and type of informational and educational programming required for license renewal. The legislative history accompanying the Act indicates that while Congress intended licensees to present "some" programming specifically designed to serve children's educational and informational needs, no minimum amount of programming was required and the precise amount was left to the discretion of the licensee. Thus, the quantitative guidelines now proposed by the Commission directly contradict express Congressional intent. The proposal also contradicts the Commission's own views as articulated in the Children's Report and Order and Commission precedent eliminating general quantitative program processing guidelines for television and radio renewals.

~~The arguments against quantitative guidelines in the~~

The Committee does not intend that the FCC interpret this section [section 4 of the Act] as requiring or mandating a quantification standard governing the amount of children's educational and informational programming that a broadcast licensee must broadcast to pass a license renewal review... (House Report at 17; Senate Report at 23).

In the Children's Report and Order, the Commission rejected requests for the imposition of quantitative programming standards, stating

The Act imposes no quantitative standards and the legislative history suggests that Congress meant that no minimum amount criterion be imposed. Given this strong legislative direction, and the latitude afforded broadcasters in fulfilling the programming requirement, we believe that the amount of "specifically designed" programming necessary to comply with the Act's requirement is likely to vary according to other circumstances, including but not limited to, type of programming aired and other nonbroadcast efforts made by the station. We thus decline to establish any minimum programming requirement for licensees for renewal review... (6 FCC Rcd at 2115).

The Commission revisited the issue in response to petitions for reconsideration and reaffirmed its position as follows:

The April 12 Order ...declined to adopt minimum quantitative criteria, finding that the Act imposes no such quantitative standards, and the legislative history indicates that none should be imposed. [Such guidelines even if they do not

to make compliance overly rigid, as broadcasters seek to meet the criteria in order to insulate themselves from further review. [B]y providing safe harbors, such guidelines might well have the unintended effect of acting as a ceiling on the amount of educational and informational programming broadcasters air. (6 FCC Rcd at 5100)

Over a decade ago, the Commission eliminated the processing guidelines being used to determine whether radio and, subsequently, television licensees broadcast sufficient local, informational and non-entertainment programming to warrant license renewal without further scrutiny.<sup>16</sup> The Commission was motivated, in part, by its concern over the constitutionality of guidelines which of necessity impinged on broadcaster discretion and programming judgments. It also determined that reliance on the quantity of programming presented in any particular category distorted traditional

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<sup>16</sup> Deregulation of Radio, 84 FCC 2d 968 (1981), modified 87 FCC 2d 797 (1981), aff'd in part and remanded in part sub nom.

Commission policies and goals. The objective of requiring licensees to provide programming that responds to community needs and interests and thereby serves the public interest is not fulfilled by mere quantity. And quantity in and of itself is not an accurate measure of the responsiveness of the licensee's programming to those needs and interests.

Moreover, as the Commission noted in TV Deregulation and in the Children's Report and Order, processing or other quantitative guidelines tend to backfire. They become performance ceilings instead of minimums. They discourage innovation and creativity. They force broadcasters to be more concerned with the amount of programming provided than with quality and responsiveness to community needs.

Delineating quantitative standards as "staff processing guidelines," as proposed in the Notice, will not disguise their status as de facto minimum performance standards. They will pose all the constitutional, policy and practical difficulties acknowledged by Congress, the Children's Report and Order and other Commission precedent. In fact, the problems inherent in any quantitative approach are particularly severe when the subject is programming designed to meet the needs and interests of children. Here innovation and creativity is of the essence, particularly when

the program is trying to educate and inform in a way that will engage children. This is not the place to focus on minute-counting. The Commission should not want licensees to reject a high quality program that has the potential to attract and hold the attention of young audiences while it educates and informs, in favor of two or three mediocre programs that take up more time but can be obtained for the same or a lower price. But arbitrary processing guidelines create precisely that incentive.

Finally, quantitative standards would be impossible to administer in the context of the programming requirements of the Act. Congress expressly wanted licensees to take the programming of other local stations into account when determining how to serve the educational and informational needs of children in their communities. In a market like New York, with 13 commercial and 3 non-commercial stations, the amount of programming any one station might decide to broadcast could reasonably be quite different from that offered by a station in a small market with only 3 or 4 local television outlets. Thus, any quantitative standard applied to an individual licensee must also take into consideration the programming of other stations in the same market -- a completely impractical and impossible proposition.

There is no basis for the Commission to abandon its rational policy approach of rejecting quantitative guidelines. As we have discussed above, licensees are currently broadcasting programs to serve children's needs and interests, and many more such programs are in the development and distribution pipeline. A change of policy when it comes to educational and informational programming for children would ultimately disserve the objectives of the Act and the child audience.<sup>17</sup>

B.      The Commission Should Not Specify The Type Of  
         Programs That Qualify As "Educational And  
         Informational"

As noted several times in these Comments, Congress intended to give licensees wide discretion in choosing the

~~programs to serve children's informational and educational~~

"specifically designed" to serve those needs. The legislative history indicates

- that a broad range of programming can meet the standard; the standard "does not exclude any programming that does in fact serve the informational



The Commission similarly gave licensees maximum discretion in determining what programs satisfied the "educational/informational" requirements of the Act. It decided to rely on Senator Inouye's view -- "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or social/emotional needs"<sup>18</sup> -- as a broad definition that advanced the Commission's desire "to stimulate, and not to dictate, programming responsive to children's needs."<sup>19</sup> The Commission correctly rejected the arguments of those who wanted qualifying programming limited to instructional or non-fiction material, stating "[s]uch a narrow view would contravene the open-minded perspective taken in the legislative history, a perspective consistent with allowing sufficient breadth of discretion for licensee creativity and sensitivity."<sup>20</sup>

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<sup>18</sup> Children's Report and Order, 6 FCC Rcd at 2114.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

The Notice backs away both from these clear statements of Congressional intent and the Commission's pronouncements in the Children's Report and Order. The Notice now proposes to create a new category of "core" programs in which the "primary objective" and "explicit purpose" is education and information, with entertainment only a secondary goal. Only programs that meet these tests would qualify. Entertainment programs with a "wrap around" pro-social message, or where the educational or informational message is "secondary," would not meet the requirements of a "core" program. The overall programming of the licensee would be ignored.

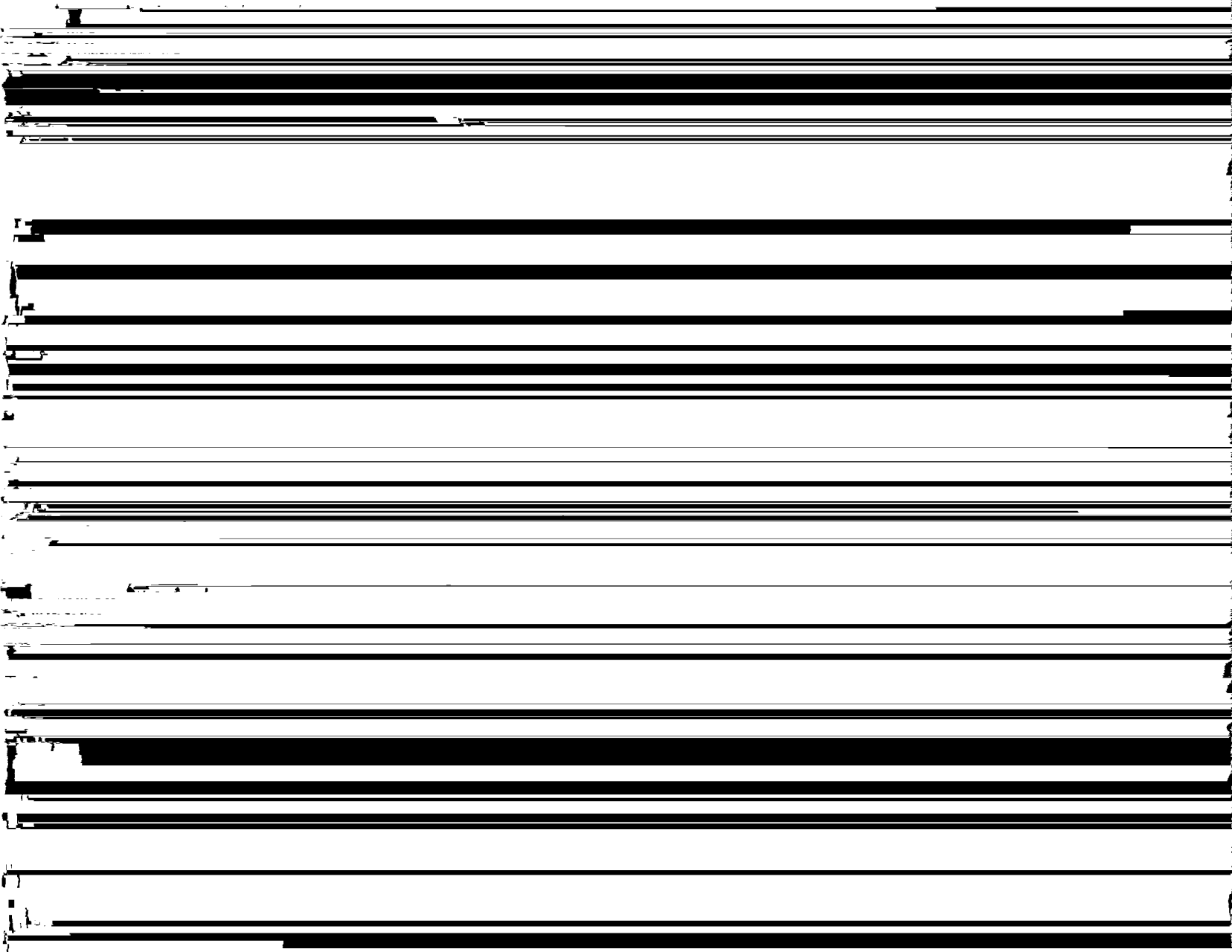
NBC strongly objects both to the concept of "core" programs and to the Commission's proposed definition of the type of programming that would qualify as a "core" program. These proposals are clearly inconsistent with the express intent of Congress. Moreover, adoption of these definitions and standards will, in the long run, diminish the quality of programming service for children.

Congress did not once use the word "core" in referring to the programs that would meet the statutory obligation. To the contrary, both the statutory language and the legislative history demonstrate that Congress intended the Commission to consider a licensee's overall programming. Thus, programs

watched by everyone can qualify. Nor does the statute or its legislative history describe qualifying programs in terms of their primary objective or explicit purpose. Programs may have many different purposes, and it would be foolish for a government agency to determine which is the "primary" one. Congress did not even imply that programs whose primary purpose was to entertain, but that nonetheless served children's informational and educational needs, would not meet the statutory standard or were somehow of secondary importance -- probably because the best children's programs will be designed to both educate and entertain. What Congress did expressly state is that any program that in fact served children's educational/informational needs, regardless of format or entertainment value, would qualify. And Congress specifically endorsed programs with pro-social content the Commission now claims cannot qualify as educational and informational.

The standard the Commission now proposes would eliminate from consideration at renewal many programs that in fact educate and inform children. Indeed almost every program mentioned with approval by Congress in the legislative history, and by the Commission in the Children's Report and Order -- e.g., "Pee Wee's Playhouse," "The Smurfs" and "Fat Albert," "Winnie The Pooh And Friends" -- probably had, as its

primary purpose, entertaining children. However, these programs were able to inform and educate children in the course of entertaining them, which is the best of all worlds. In fact, if a program is not entertaining, children will not watch it. Thus the proposed definition creates a terrible false dichotomy -- that programs that inform and educate cannot entertain. No one is served if broadcasters are forced by the government to present programs that have education and



serve their informational and educational needs.<sup>21</sup>

Since the programming requirements of the Act have been in effect, episodes of "Saved By The Bell" have covered the following subjects:

- The Environment: Oil is discovered on the school campus, raising the possibility of funds for new facilities. However, extracting the oil would destroy the surrounding environment and wildlife. The trade-offs between economic development and preserving the environment are explored.
- Education: The characters learn how to deal the with anxiety surrounding SATs and college admissions. They also learn that is it not necessary to go to a "prestige" school to get a good college education.
- Homelessness: The characters encounter a homeless family and learn about the causes of homelessness, and the problems and prejudices homeless people face.
- Alcohol Abuse: The characters drink and drive, and then lie to their parents to cover up a car accident. The learn important lessons about "just saying no" to alcohol, drinking and driving and truthfulness.
- Peer Acceptance: The importance of accepting and respecting others even if they look or act different from the "norm."

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<sup>21</sup> Programs like "Saved By The Bell" are essentially parables, which are exceptionally effective vehicles for presenting educational material to children. There is a rich tradition in literature and drama for teaching through parables, and any educator would agree that children learn best when their lessons are presented in familiar language and settings.

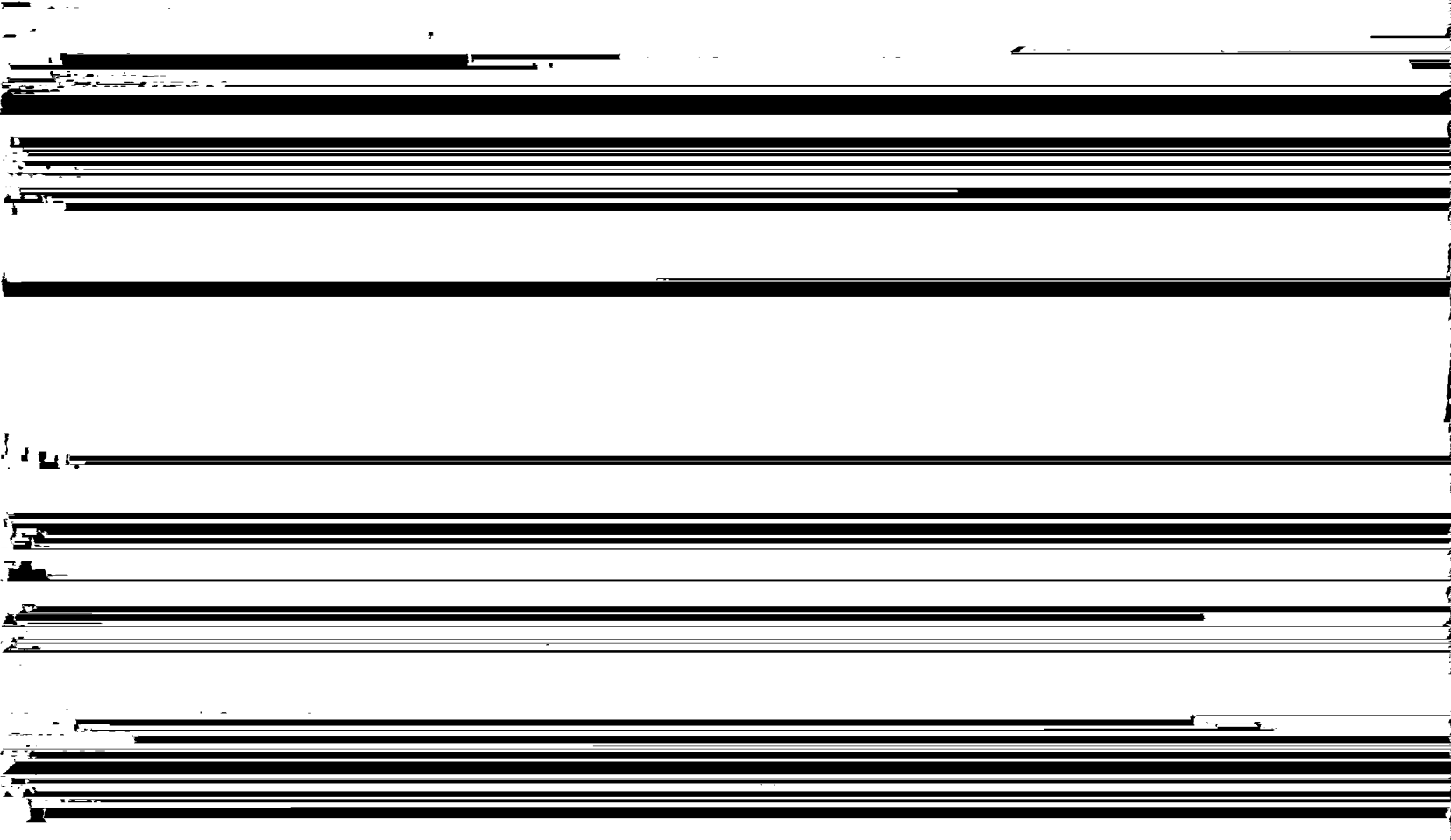
- Teacher Appreciation: The characters take the place of their teachers and school administrators for a week and learn to respect the difficult decisions make and responsibilities they have. The episode also conveys the importance of education and dedication to school work.

- Handicapped. A handicapped character is introduced and the episode deals with the treatment of the handicapped by institutions and individuals as contrasted with how they would like to be treated.

Is the Commission now saying that "Saved By The Bell" should not qualify because one of its original objectives was to entertain, even though it does, in fact, educate children

counterproductive.

Furthermore, the standard proposed by the Commission will be extremely difficult to administer and enforce. Unlike the Act's "specifically designed" criterion, which can be measured with some objectivity in terms of the intention of the producer or the broadcaster, the "primary objective/explicit purpose" tests are essentially subjective, and will have to be based on evaluations that are difficult if not impossible for the Commission to make and administer. The Commission cannot sit in judgment of the real purpose or objective of a program. It must instead rely, as it



needs.<sup>22</sup> However, the Commission also made clear that short segment programming plays an important role in providing education and information to children, and that such programming would be credited toward fulfilling the children's programming requirement. The Commission's decision to give full credit for short segment programming was prompted, in part, by Congress' stated intent to give broadcasters maximum flexibility under the Act, so that "any program that in fact serve[s] the educational and informational needs of children" would qualify.<sup>23</sup> Certainly short segment programs are part of the licensee's "overall programming."

In the Notice, the Commission retreats from its original view and takes the position that licensees should place "primary reliance" on standard length programs, and should accord short segment programs only "secondary importance" -- indeed, "no importance" in terms of the proposed processing guidelines. The only reason cited by the Commission for this shift is the view that standard-length

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<sup>22</sup> Reconsideration Order, 6 FCC Rcd at 5101.

<sup>23</sup> House Report at 12; Senate Report at 17



programs are "scheduled" and therefore available at predictable times, a characteristic that may be important to parents who want to be involved in their children's viewing choices. This rather tortured rationale stands in contradiction of the Commission's refusal to require licensees to air "regularly scheduled" educational and informational programming.<sup>24</sup> Moreover, short segment and interstitial educational messages are often scheduled at the same times within or adjacent to particular programs, and interested parents could probably become accustomed to those scheduling patterns. On the other hand, to the extent they are not regularly scheduled, these short programs reach a broader audience of children with their messages.

More significantly, NBC submits that relegating short segment programming to "secondary importance" creates yet another false dichotomy between program types that will

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<sup>24</sup> Children's Report and Order, 6 FCC Rcd at fn. 81. Once again deferring to the discretion of the each licensee and its familiarity with its own community and audience, the Commission did not want to foreclose the possibility that some licensees might choose to serve children with intermittent special programs devoted to topical issues.

ultimately reduce the amount and quality of programming that effectively fulfills the mandate of the Act. Short segment programs and vignettes are extremely effective vehicles for teaching and informing children. Indeed, the acclaimed "Sesame Street" is nothing more than a series of educational segments, some as short as the typical commercial advertisement. Shorter program segments may have a greater chance of attracting and holding a young child's attention than a 30 or 60 minute educational program. Short segments and interstitial educational programs can be inserted within and between programs that are not necessarily specifically designed to serve the informational and educational needs of children, but which children watch in large numbers. Thus the programming material to which Congress and the Commission would like children to be exposed will, in fact, reach a large child audience.

Finally, as the Commission recognized in its  
Reconsideration Order

[P]ermitting only conventional-length programming may discourage innovative programming on the part of broadcasters with limited resources, who may opt instead for inferior but inexpensive standard-length material that nevertheless fits the letter of the programming renewal review requirement. (6 FCC Rcd at 5101).

The Commission should not change the position it adopted in its implementing regulations: while a licensee cannot rely exclusively on short-segment programs to meet its obligation to children under the Act, such programming will be credited toward fulfillment of that obligation to the same extent as standard-length programs.

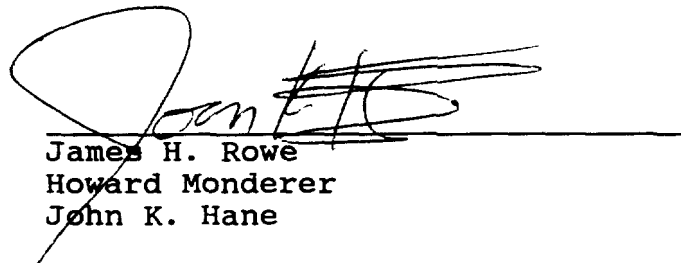
IV. CONCLUSION

For the foregoing reasons, NBC urges the Commission not to adopt the standards and guidelines proposed in the Notice, and to instead reaffirm the policies and rules it has already issued, reiterating the importance of programming responsive to the educational and informational needs of children to the license renewal process.

Respectfully submitted,

  
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May 7, 1993

EXHIBIT A

"NAME YOUR ADVENTURE" SEGMENTS  
1992-93 Season

CITY SLICKERS

Adventurer and Mario experience a cattle drive and life on the range.

RECYCLING

Adventurer and Jordan go to a recycling plant.

TAP DANCE W/GREGORY HINES

Adventurer and Mario visit Gregory Hines in his studio to learn the art of tap dancing.

FBI

Adventurer and Mario go to the FBI training academy.

DIRECTOR FOR A DAY

Adventurer and Jordan visit with Henry Winkler on the set of his new film.

L.A. MURAL

Adventurer and Mario participate in the South Central L.A. cleanup by helping paint a mural with artist George Yepes.

SPORTSCASTER SCHOOL

Adventurer and Mario go to Angels stadium where they visit with Bob Miller - voice of the L.A. Kings and Sportscasters School of America.

RAINFOREST

Adventurer and Jordan visit the last American Rainforest.

TRAPEZE

Adventurer and Mario learn how to be trapeze artists.

#### ROAD MANAGER

Adventurer and Mario learn what it takes to manage the day-to-day operations of a band on the road.

#### LIFEGUARD FOR A DAY

Adventurer and Jordan learn about the safety issues and responsibility involved in being a lifeguard.

#### JOFFREY BALLET

Adventurer and Mario learn about the work and discipline necessary to be a professional dancer.

#### HAWAII

Adventurer and Mario explore Hawaii, including its native customs, topography and wildlife.

#### ZOOKEEPER

Adventurer and Jordan examine the animals, their feeding habits and their larger environment in the zoo.

#### JEAN-CLAUDE VAN DAMME

Adventurer and Mario discuss the training, physical discipline and self-defense aspect of kickboxing with Van Damme.

#### REPORTER FOR A DAY

Adventurer and Mario learn about the editorial and creative decision-making involved in putting together a magazine story.

#### SPACECAMP

Adventurer and Jordan visit NASA to learn about being an astronaut.

FIREFIGHTER

Adventurer and Mario explore the safety concerns, risks, technical equipment issues and standard operating procedures of the San Diego firefighters.

ARTIST FOR A DAY

Adventurer and Mario visit Pageant of Masters and learn about various art forms and media, including what it takes to present a picture using live actors.

FOOTBALL TRAINING

Adventurer and Jordan train with Jim Everett.

SWIMMING WITH DOLPHINS

Adventurer and Mario spend a day learning about dolphins.

SURVIVAL TRAINING

Adventurer and Mario discover the skills and information necessary for survival in the wilderness.

RECORDING SESSION

Adventurer and Jordan examine the technical operations of a recording studio.

SENATOR FOR A DAY

Adventurers and Mario visit with Sen. Danforth and Sen. Kerry and learn about their roles in Washington.

PHOTO SAFARI

Adventurer and Mario learn about the art of photography as well as the animals on a safari.

ANIMATION FACTORY

Adventurer and Jordan go to an animation production company and learn the process of animation.

#### MOTOCROSS

Adventurer and special guest host, Mark Paul Gosselar, learn the techniques and safety tips in motocross.

#### SEAWORLD

Adventurer and Mario learn about underwater life.

#### SNOWBOARDING

Adventurer and Jordan learn about how glaciers are formed and preserved and how to safely snowboard on one.

#### DISC. JOCKEY FOR A DAY

Adventurer and Mario learn the scheduling, timing and other demands of being a D.J.

#### MAGICIAN'S APPRENTICE

Adventurer and Mario visit Harry Blackstone Jr. to learn the art of magic.

#### PAIRS SKATING

Adventurer and Jordan get instruction from Brian Boitono about the differences between single and pairs skating and other figure skating techniques.

#### GLIDER

Adventurer and Mario learn how a Glider works and apply their knowledge in flight.

#### CHEF'S TRAINING

Adventurer and Mario go to a Culinary Institute and train with chefs.

#### CAR OF THE FUTURE

Adventurer and Jordan visit with a car designer and learn about cars of the future.

#### WHITE WATER RAFTING

Adventurer and host go white water rafting.